A requirement to notify HMRC of offshore structures: HMRC consultation

Management of taxes

01 February 2017

Proposals to introduce a new legal obligation to report the creation of complex offshore financial arrangements to HMRC and provide a list of clients using them.

HMRC's consultation document 'Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures' was published in December 2016 and is the latest chapter in the Government's 'No Safe Havens' offshore tax evasion strategy.

The consultation paper sets out the Government's proposals for a new legal requirement that intermediaries creating or promoting certain complex offshore financial arrangements should notify HMRC of their creation and provide a list of clients using them. Clients in turn would be expected to notify HMRC of their involvement via a notification number on their self-assessment tax return or personal tax account. Those who fail to comply with these requirements would incur civil sanctions.

Despite the increase in international tax transparency engendered by exchange of information agreements, the Government believes that more information is needed to understand highly complex offshore arrangements, especially where beneficial ownership is being deliberately hidden. Whilst recognising that in many cases offshore financial arrangements are used for legitimate purposes, the measure aims to target those arrangements which could easily be used to conceal the beneficial owner or the flow of money for tax evasion purposes.

The key policy rationale behind the proposals are that:

- It would increase transparency around these sorts of arrangements and their usage, allowing HMRC to improve its ability to assess risk.
- The information would be used in line with HMRC's 'Promote, Prevent, Respond' strategy, through the creation of educational material to raise awareness and promote voluntary compliance. Data on the individuals who use these arrangements will enable HMRC to target their compliance activity better.
- Data on the creators and promoters of complex offshore financial arrangements would also improve HMRC's ability to identify and therefore to target enablers of offshore tax evasion.
- A better understanding of how complex offshore arrangements are structured will support HMRC in identifying and excluding legitimate arrangements from this initiative.
- In some instances the arrangements may be captured under international information exchange initiatives. However, in some cases they would not be captured, or it would be difficult to see and understand the arrangement in its entirety.

The consultation paper provides five examples of arrangements using offshore structures which are designed to facilitate discussion on how the proposals would work in practice.

Views are sought on how to define the scope of the reporting requirement:

- Should it apply to both UK and non-UK persons/businesses who create offshore arrangements?
- How can legitimate arrangements be distinguished from those being used for tax evasion purposes?
- How could HMRC define the type of arrangements that are in scope?
- Once identified, what characteristics ('hallmarks') must the arrangements demonstrate to be notifiable?
- Are there any concerns about the use of hallmarks?
- How can the measure avoid duplicating existing reporting requirements such as the Common Reporting Standard (CRS) and Disclosure of Tax Avoidance Scheme (DOTAS) rules?

There are further questions on the impact that legal professional privilege might have on the effectiveness of the requirement, and the impact the measure might have on UK resident but non-domiciled individuals.

Whilst this might sound like a reasonable proposal in theory, enabling HMRC to collect relevant and additional information specifically to assist their investigatory work, it could prove to be quite challenging in practice to target the scope and hallmarks sufficiently tightly so that it does not become simply a mass information gathering exercise by HMRC. We would not want to see it create an excessive compliance and reporting burden on professional advisers involved in setting up complex offshore financial structures which are being used for perfectly legitimate purposes. On the other hand a very selective approach by HMRC might not elicit much information since the vast majority of professional advisers are not knowingly involved in setting up structures that are being used for tax evasion purposes. It also needs to be made clear what information would be obtained that will not already be obtained under the Common Reporting Standard and other Exchange of Information measures. In addition, there is the risk that, as has happened recently with DOTAS, a notification leads to other consequences in the future which were not foreseen when the obligation was first introduced.

The consultation is taking place during Stage 1 of the consultation process – 'Setting out objectives and identifying options'. Its purpose is to seek views on the feasibility and high level design principles of the proposal. Should the decision be taken to proceed following this initial consultation, a further consultation would take place on the details.

If you have any comments that you would like us to make in our response to the consultation document please send them to mcurran@ciot.org.uk or technical@ciot.org.uk. The closing date for comments to be sent to HMRC is 27 February 2017.